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**Docket Control Arizona Corporation Commission** 1200 W. Washington Street

Phoenix, Arizona 85007

Re: Docket No. RE-00000C-94-0165

Dear Sir or Madam:

Enclosed for filing are an original and ten copies of the Comments of the Land and Water Fund of the Rockies, the Grand Canyon Trust, and Arizonans for a Better Environment regarding Decision No. 61071, issued August 10 in the above referenced

docket.

Sincerely,

Ein Blank Eric Blank by J. J. D.

Director

LAW Fund Energy Project

Serving the **Rocky Mountains** and Desert Southwest

BEFORE THE ARIZONA COL	
JIM IRVIN	DOCKETED COMPANY
COMMISSIONER-CHAIRMAN RENZ D. JENNINGS COMMISSIONER	SEP 18 1998 EP 18 2 33 PM '98
CARL J. KUNASEK COMMISSIONER	DOOKETED BY DOOR THAT SOMETHOU
IN THE MATTER OF THE COMPETITION IN THE PROVISION OF ELECTRIC SERVICES THROUGHOUT THE STATE OF ARIZONA.	) DOCKET NO. U-0000C-94-165 ) ) )

### COMMENTS OF THE LAND AND WATER FUND OF THE ROCKIES, THE GRAND CANYON TRUST, AND ARIZONANS FOR A BETTER ENVIRONMENT REGARDING THE PROPOSED ELECTRIC UTILITY RESTRUCTURING RULES

The Land and Water Fund of the Rockies (LAW Fund), the Grand Canyon Trust (the Trust), and Arizonans for a Better Environment (ABE) hereby submit their comments on the Corporation Commission's Proposed Rules (Rules) governing competition in the provision of electric services. The LAW Fund is a regional non-profit environmental law center providing legal and policy assistance to community groups throughout the Rocky Mountain and Desert Southwest region, and advocating for sustainable energy policy and practices in a variety of state and national forums. The Trust is a non-profit, regional conservation organization dedicated to the conservation of the natural and cultural resources of the Colorado Plateau. The Trust began its work in 1985, currently has 5,000 members, and is headquartered in Flagstaff, Arizona. The Trust is committed to the development of clean, renewable energy sources and the efficient use of our current energy resources. ABE is a non-profit, donation-supported, educational, research, and public interest advocacy organization with a long-standing interest in energy and regulatory issues in Arizona.

#### **Introduction and Summary**

On August 10, 1998, the Arizona Corporation Commission (ACC or the Commission) issued Decision No. 61071 in this docket adopting proposed Rules to transition to a competitive electric service environment. These Rules are the end result of nearly four years of work, struggle, and compromise of parochial interests on the parts of widely diverse parties numbering in excess of 50. To our knowledge, there is no party that opposes the introduction of a competitive electric utility environment. Indeed,

some parties have already been marketing their competitive electric services well in advance of the official opening of the market.

Clearly, all parties have interests that have not been fully satisfied by these proposed Rules. The utilities would like greater assurance of cost recovery, customer representatives would like more choice sooner as well as assurances of rate reductions, new market entrants want better access to customers, and environmental groups want more attention paid to the tremendous impact that electricity supply has on the natural environment. We have all compromised in our efforts over the past few years, in the interest of developing a reasonably fair set of Rules under which to introduce a competitive electric service environment. In our view, this has been achieved and the Commission should stand firm in its commitment to these Rules, and implement electric supply competition as scheduled on January 1, 1999.

Our primary interest has been to assure that the much-anticipated competitive market for electricity supply does not lead to reliance on short-term interests in resource decisions of electricity suppliers and deleterious effects on the environment. We could not say it better than the National Association of Regulatory Commissioners (NARUC):<sup>1</sup>

The electric industry has profound impacts upon the environment. Under the principles of traditional utility regulation and, in particular, integrated resource planning, it has been possible for utilities and governments to pursue environmentally responsible development policies.

The invisible hand of the market is powerful, but the limitations of markets are real: external costs, by definition, are not accounted for by markets, competitive or otherwise. Historically, regulation of electricity generation and transmission offered a means of partially, if imperfectly, addressing external costs. Restructuring initiatives should be designed to maintain or improve society's ability to consider external costs when making resource and delivery decisions. There are a variety of mechanisms that policy-makers can consider in order to achieve this goal, and their ultimate choices will be guided by the particular needs of their States and regions.

This Commission has chosen several appropriate mechanisms to incorporate into the Rules that will help to achieve the goals of the NARUC resolution. These are the Solar Portfolio Standard, the System Benefits Charge, information disclosure, and a renewable resource consideration in the determination of stranded cost recovery mechanisms and charges. Each is discussed below.

<sup>&</sup>lt;sup>1</sup> NARUC Principles To Guide The Restructuring of the Electric Industry, Adopted July 25, 1996 Reported NARUC Bulletin No. 32-1996, page 10.

### I. The Solar Portfolio Standard should be compromised no further, and implemented on schedule January 1, 1999.

The Commission has supported development of renewables by utilities in Arizona for a number of years. In the first two cycles of Integrated Resource Planning (IRP), the Commission encouraged Arizona utilities to diversify their generation mix by adding renewable resources. Unfortunately, very little renewable resource generation has resulted from these IRP proceedings. The Solar Portfolio Standard (SPS) addresses environmental impact issues while leveling the playing field for all electric service providers and promoting economic development.

The Unbundled Services and Standard Offer Service Working Group established a Solar Portfolio Standard Subcommittee to focus on the issues related to the portfolio standard. Prior to the first meeting, subcommittee members submitted 27 major issues of concern. At the first meeting, an additional 27 issues were identified. The subcommittee then grouped these 54 issues into eight major issue categories and methodically worked through them resulting in the SPS chapter in the Working Group Report. According to the report, the Corporation Commission Staff was guided by the following objectives in developing the SPS details:

- 1. Encourage the use of solar electric technologies to increase the fuel diversity in the electricity generation mix.
- 2. Increase utility and electric service provider expertise and experience in the procurement, installation, and operation of solar electric systems or in the purchase and transmission of solar electricity from other sources.
- 3. Encourage new solar electric technologies as a reasonable percentage of competitive retail electric sales that is significantly less than the annual growth of demand for electricity.
- 4. Encourage the use of modest-sized, distributed solar generators to reduce the loading on existing transmission lines and also reduce the need to build new, expensive transmission lines as the demand for electricity increases in the future.
- 5. Contribute to the commercialization of solar electric technologies, which will decrease the cost of solar electricity to Arizona customers in the future.

As a result of extensive discussions of the subcommittee, these objectives were supplemented with several additional objectives:

<sup>&</sup>lt;sup>2</sup> See Report to the Arizona Corporation Commission submitted by the Unbundled Services and Standard Offer Working Group, November 3, 1997.

- 6. Contribute to economic benefits throughout Arizona.
- 7. Encourage environmental benefits.
- 8. Encourage a market-based solar electric industry.
- 9. Increase public information/awareness of solar electricity.
- 10. Reach an acceptable cost/benefit point.
- 11. Encourage solar resource development, rather than payment for non-compliance.

The SPS reflected in the Rules adopted by Decision No. 61071 is consistent with these objectives. While we might place more emphasis on one or more of these objectives than others, we also support each and every one of these objectives.

The subcommittee addressed diverse matters of disagreement, however the key issue was the cost of the standard. The important result was to recommend additional "extra-credit multiplier" incentives that would decrease the cost impact. This recommendation resulted in a series of incentive provisions that encourage early development of solar resources, manufacturing and installation in Arizona, and implementation of distributed solar resources. In addition to direct cost reduction through reduced capacity requirements, these incentives will foster advances in technology, encourage economies of scale, promote job development related to the manufacturing industry, reduce transmission and distribution costs through distributed generation, and allow ESPs to gain greater experience with manufacturing and applying solar resources.

From a customer's perspective, a significant share of the SPS costs is likely to be borne by those competitive market consumers who desire "green power." That is, those consumers who value solar power the most are likely to bear a proportionally larger fraction of the costs of the solar resources, through "green pricing," for example. Survey after survey has shown a willingness among customers to pay a premium for electricity generated from clean resources. Experience bears this out. In Colorado, nearly 15MW of wind energy has been subscribed through a green pricing program in a very short time with virtually no advertising.

The percentage standard is consistent with the utilities' planned generating capacity additions, as reported in the 1995 Resource Planning filings. By 2003, the year full competition is to start, the utilities have planned to add 377 MW of generating capacity; by 2004 they have planned to add 602 MW of generating

capacity.<sup>3</sup> Consistent with the SPS objectives, only a small share of the growth in demand will be met with solar electric resources. The potential solar electric capacity result of the portfolio standard has evolved over the past two years to moderate the impact on competitive electric service providers. Including SRP, which represents about 40% of the total, the range of MWs required by the standard is as follows:

Solar Portfolio Standard MW	1999	2000	2001	2002	2003
Total Projected GWh of Affected Utilities	51,500	53,050	54,600	56,300	58,000
12/26/96 Rule Maximum	21	21	. 52	105	265
12/26/96 Rule with full credits	11	11	26	52	133
7/24/98 Draft Rule Maximum	21	§ 21	125	257	265
7/24/98 Draft Rule with full credits	7	7	44	93	96
Decision 61071 Rule Maximum	9	19	150	206	265
Decision 61071 Rule with full credits	3	7	53	74	97

With the refinement of the extra credit multipliers since the original rule was adopted in 1996, it would be difficult for a supplier *not* to achieve at least a two for one multiplying effect. Indeed, these multipliers are likely to be captured to their fullest extent, dramatically reducing the amount of solar electric resources required by the standard, and associated cost impacts. Further, solar resources constructed for the purposes of meeting IRP goals are now counted towards the standard, unlike the December 1996 Rule.

The modifications to the SPS element of the Rule respond directly on point to the criticisms of the standard raised by the Affected Utilities and others. Any further compromise of the portfolio standard would raise doubts as to the seriousness of the commitment of Arizona to developing an enormous new industry. The standard, as modified August 5, 1998, should be implemented on schedule January 1, 1999.

<sup>&</sup>lt;sup>3</sup> These figures should be regarded as estimates.

<sup>&</sup>lt;sup>†</sup> The increases in 2001 and 2002 are related to the acceleration of full competition by two years.

<sup>&</sup>lt;sup>†</sup> The increases in 2001 and 2002 are related to the acceleration of full competition by two years.

# II. The System Benefits Charge should be adopted in conjunction with review of administration, targeted DSM for Standard Offer customers, and an abbreviated resource planning process.

Our primary concern with the System Benefits Charge (SBC) has been to assure sufficient funding for programs beneficial to electricity consumers into the competitive era. By definition, the SBC is designed to provide a funding vehicle for programs developed for societal benefit within a regulated electric utility framework, that may not be supported by for-profit entities seeking to maximize earnings in a competitive environment. Our discussion focuses primarily on "traditional" SBC items. While we continue to believe that nuclear decommissioning costs are more appropriately included with other generation cost recovery, i.e. in a stranded cost calculation, in the spirit of compromise, we will not oppose recovery through the SBC.

Implementation of a SBC removes any earnings impact and thus disincentive for utilities to continue these public benefits programs. Nevertheless, it was apparent during working group discussions that several of the Affected Utilities had little interest in maintaining strong and effective programs, such as energy efficiency (DSM), for example. Indeed, there are several DSM programs that had not been submitted to the Commission for approval until after the Restructuring Rule was approved in December 1996. Moreover, the renewable programs and capacity goals resulting from past IRP proceedings have been largely ignored by the Affected Utilities. In addition, programs funded by the SBC can bring economic development benefits to Arizona. In a report released in the summer of 1997, Arizona Energy Outlook: 2010, Economic Research Associates of Virginia found that growing energy efficiency and solar electric renewable resources in the energy mix in Arizona can provide significant economic benefits to the state. We believe these to be important programs that may require greater funding levels than historic levels. Again, a compromise was reached that calls for review of SBC programs every three years.

Administration of SBC funds must be structured to avoid conflicts of interest. For example, energy efficiency programs can be very cost-effective from the customer's viewpoint, as they reduce the need to purchase energy from a supplier. If that energy supplier is part of the same corporation as the distribution business administering the SBC funds, a conflict is created. Moreover, new entrants to the energy supply market may choose to use energy efficiency programs as part of their marketing to attract new customers, and may want to bid for a portion of the funds.

We have concerns that the market power of the Affected Utilities impacts their ability to act impartially as the administrator of SBC funds. Indeed, having the incumbent utilities administer energy efficiency programs is like putting the tobacco companies in charge of distributing nicorette gum and the "patch." We believe that the only way of fully eliminating such market power in a vertically integrated utility is through divestiture of generation assets. While the Rule allows this option for Affected Utilities, only one utility has thus far proposed to take advantage of this alternative. Assuming that an incumbent remains vertically integrated, the monopoly distribution business segment could only efficiently administer the funds if effective firewalls were in place. Even then, substantial administrative oversight will be required. Alternatively, an independent administrator could be established to properly allocate SBC funds, establish the stratified and segmented bidding necessary for effective use of the funds, and report to the ACC. We recommend that the Commission re-examine the effectiveness of program administration as an integral part of the three-year review.

Retail access is intended to bring competitive benefits to the people of Arizona, including lower prices for end users of electricity. The Decision No. 61071 version of the proposed Rules allows larger customers the first shot at the competitive electricity supply market. Section R14-2-1604(C) provides that Affected Utilities are to develop possible mechanisms to provide benefits, such as rate reductions of 3% - 5%, to all Standard Offer customers, i.e. those unable to overcome the transaction costs of participating in the competitive market. To help the Standard Offer customer achieve real benefits, we believe that significant savings can be provided via bill reductions through energy efficiency and low-income programs covered by the SBC. The Commission should encourage Affected Utilities to develop DSM programs targeted at Standard Offer customers.

The goal of the SBC is to maintain existing programs providing a societal benefit that would otherwise be eliminated in a competitive energy supply market. Affected Utilities have already shown that they neither want to be in the DSM business nor in developing newer technologies such as solar PV. Therefore, the Commission should maintain strong support of an effective SBC in conjunction with a shortened, more efficient form of resource planning.

## III. Information disclosure is critical to informed customer choice, and must be retained as a key element of the Rule.

All parties agree that education of customers who have choices for electricity suppliers is an extremely important element. In restructuring the electric industry in California, some \$80 million was spent on educating consumers, with very mixed results. This Commission established a separate working group to address this matter. While broad-based efforts to educate consumers are important, much of the real consumer education will come through the marketing efforts of electric service providers. Therefore, it is equally important to assure that customers faced with promotional material from a variety of suppliers have adequate and uniform information upon which to make a decision.

The NARUC addressed the information issue in a November 1996 Resolution<sup>4</sup> suggesting that informed customer choice will promote efficient markets, resource diversity and environmental quality. It supports initiatives that lead to minimum, enforceable uniform standards for the form and content of disclosure and labeling that would allow retail and wholesale consumers to easily compare characteristics of their electricity purchases. Finally, NARUC urges States adopting retail direct access programs to include enforceable standards of disclosure and labeling that would allow retail customers to easily compare the price, price variability, resource mix and environmental characteristics of their electricity purchases.

In a regulated environment, electricity consumers have no choice of supplier and the regulatory body is expected to look after societal concerns. By allowing customers to choose their electricity supplier, oversight is now in the hands of the consumers. Customers must have more detailed information than currently available in order to choose wisely among competing suppliers.

An adage in the marketing industry is "a confused mind says no." The corollary here is that a confused mind makes no choice. Affected Utilities may oppose information disclosure because a confused customer stays with the current supplier, as has been the experience of the telecommunications industry. Thus, the alternative to full information disclosure (such as that presently included in the proposed Rules) is to bid out the "supplier of last resort" service. We recommend that the Commission maintain a strong information disclosure standard, or, in the alternative, allow the supplier of last resort service to be competitively bid.

<sup>&</sup>lt;sup>4</sup> See Attachment A for the full text of the Resolution.

### IV. Full stranded cost recovery should be contingent upon fulfilling past regulatory renewable resource commitments.

Section R14-2-1607(E) of the Proposed Rule indicates that after hearing, the Commission, in making its determination of stranded cost mechanisms and charges, shall consider among other things:

"The amount of electricity generated by renewable generating resources owned by the Affected Utility."

The meaning of this consideration has been questioned. The two meanings suggested for this are:

- (1) the costs associated with renewable generating resources may be part of the stranded cost calculation, and
- (2) the amount of renewable electricity generated by an Affected Utility may affect the propriety of full stranded cost recovery.

The first definition implies that costs associated with renewable resources are to be somehow considered as *part* of the stranded cost charge. This makes no sense. First, the System Benefits Charge is specifically designed to recover the cost of renewable resources, thus no separate treatment is necessary. Second, each of the other ten items on the consideration list relates to determination of appropriate *recovery*, and not the calculation of the *amount* of stranded cost.

The second definition suggests that Affected Utilities that are progressive in developing and acquiring renewable generating resources, should be provided greater assurance of stranded cost recovery by the Commission. Clearly, this is consistent with the other consideration in this section, and is an appropriate item to consider in determining stranded cost mechanisms and charges.

Renewable electricity generation is a valid consideration by the Commission at a time when regulated entities are requesting guarantees of recovery of all past electric generation resource expenditures made in a regulated environment. Regulated electric utilities that seek to recover 100% of historic generation investments should be taken to task with respect to other investment commitments made in the regulatory regime but not yet fulfilled. For example, in the 1993 Integrated Resource Planning Docket (No. 93-052), Arizona Public Service Company (APS) indicated that it is willing to strive toward a "goal" of 12 MW for renewables by 2000 and Tucson Electric Power Company (TEP) indicated that it is willing to strive toward a goal of 5 MW for renewables by 2000. The Commission responded in its opinion and order:

"We [the Commission] regard these statements as serious commitments and will accept them as planning goals. However, if APS and TEP appear to fall significantly short of meeting these goals, we shall reconsider short-term set asides."

The utilities have fallen far short of meeting these commitments. This is of increased concern because Affected Utilities that are perceived as "green" by electric consumers are likely to have an advantage in their marketing and customer retention efforts. We recommend that the Commission follow through on this element of the stranded cost section of the Rule, and, in light of the IRP opinion and order, consider the amount of electricity generated by renewable resources of Affected Utilities before allowing full stranded cost recovery. To the extent that an Affected Utility has fallen short of its "serious commitments," the Commission should reconsider the use of short-term set asides as suggested in the 1993 IRP Order.

#### V. Conclusion

For the reasons described in detail above, we respectfully request that the Commission take the following actions:

- 1. Implement the Solar Portfolio Standard, as modified August 5, 1998, on schedule January 1, 1999 without further compromise.
- 2. Re-examine the effectiveness of System Benefits Charge program administration as an integral part of the three-year review.
- 3. Encourage Affected Utilities to develop DSM programs targeted at Standard Offer customers.
- 4. Maintain strong support of an effective System Benefits Charge in conjunction with a shortened, more efficient form of resource planning.
- 5. Maintain a strong information disclosure standard, or, in the alternative, allow the supplier of last resort service to be competitively bid.
- Consider the amount of electricity generated by renewable resources of Affected Utilities before allowing full stranded cost recovery, and reconsider the use of short-term set asides as suggested in the 1993 IRP Order.

Respectfully submitted this 18th day of September, 1998.

Rick Gilliam, Senior Policy Advisor

Eric Blank, Director, Energy Project and Attorney for

The Land and Water Fund of the Rockies,

The Grand Canyon Trust, and

Arizonans for a Better Environment

### Resolution in Support of Customer "Right-to-Know" and Product Labeling Standards for the Retail Marketing of Electricity

WHEREAS, At least 30 million consumers in six States will begin choosing among competitive electricity providers in early 1998 and retail access to competing electricity suppliers is under consideration in many other states; and

WHEREAS, Electricity purchases make up a significant portion of the budget of many households; and

WHEREAS, The production of electricity imposes very substantial resource and environmental impacts; and

WHEREAS, Pilot retail access programs have shown that customer confusion and misleading claims are highly likely; and

WHEREAS, Clear and uniform disclosure may promote efficiency through informed product comparisons; and informed customer choice cannot occur in a retail electricity market without full disclosure of all relevant and important facts; and

**WHEREAS**, The desirability and feasibility of such disclosure is clearly established in nutrition labeling, uniform food pricing, truth-in-lending and many other Federal consumer protection programs; and

**WHEREAS**, The National Association of Regulatory Utility Commissioners (NARUC), at its November 1994 meeting, adopted a resolution on competition and stranded benefits calling for new proposals to preserve environmental and diversity benefits in a more competitive marketplace; and

WHEREAS, The NARUC, at its July 1996 meeting, adopted "Principles to Guide the Restructuring of the Electric Industry," which include market-based mechanisms to promote effective consumer choice and to preserve renewable resources, resource diversity and environmental protection; now, therefore, be it

**RESOLVED**, That the National Association of Regulatory Utility Commissioners (NARUC), convened at its 108th Annual Convention in San Francisco, California believes that restructuring the electric industry should facilitate informed customer choice that will promote efficient markets, resource diversity and environmental quality; and be it further

**RESOLVED**, That the NARUC supports initiatives leading to minimum, enforceable uniform standards for the form and content of disclosure and labeling that would allow retail and wholesale consumers to easily compare price, price variability, resource mix and environmental characteristics of their electricity purchases; and be it further

**RESOLVED**, That NARUC urges States adopting retail direct access programs to include enforceable standards of disclosure and labeling that would allow retail customers easily to compare the price, price variability, resource mix and environmental characteristics of their electricity purchases.

Sponsored by the Committee on Energy Conservation Adopted November 20, 1996

### BEFORE THE ARIZONA CORPORATION COMMISSION

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Commissioner - Chairman	C-n 19	2 34 PM 198		
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IN THE MATTER OF THE COMPETITION IN	) DOCKET NO.	RE-00000C-94-0165		
THE PROVISION OF ELECTRIC SERVICES	)			
THROUGHOUT THE STATE OF ARIZONA.	)			
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### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the original and ten (10) copies of the Comments of the Land and Water Fund of the Rockies, the Grand Canyon Trust, and Arizonans for a Better Environment, regarding Decision No. 61071, issued August 10, 1998, were sent via Federal Express to Docket Control, Arizona Corporation Commission, 1200 West Washington Street, Phoenix, Arizona 85007, and the 18th day of September, 1998, a true and correct copy was sent by United States mail, first-class, postage pre-paid, to the following persons:

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8

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